

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

BARON WOLMAN,

Plaintiff,

- against -

L'OFFICIEL USA, INC.

Defendant.

Docket No. 18-cv-12223

JURY TRIAL DEMANDED

COMPLAINT

Plaintiff Baron Wolman (“Wolman” or “Plaintiff”) by and through his undersigned counsel, as and for his Complaint against Defendant L’Officiel USA, Inc. (“Defendant”) hereby alleges as follows:

NATURE OF THE ACTION

1. This is an action for copyright infringement under Section 501 of the Copyright Act. This action arises out of Defendant’s unauthorized reproduction and public display of copyrighted photographs of Pamela des Barres, owned and registered by Wolman, a New Mexico-based professional photographer. Accordingly, Wolman seeks monetary relief under the Copyright Act of the United States, as amended, 17 U.S.C. § 101 *et seq.*

JURISDICTION AND VENUE

2. This claim arises under the Copyright Act, 17 U.S.C. § 101 *et seq.*, and this Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §§ 1331 and 1338(a).

3. This Court has personal jurisdiction over Defendant because Defendant resides in and/or transacts business in New York.

4. Venue is proper in this District pursuant to 28 U.S.C. § 1391(b).

PARTIES

5. Wolman is a professional photographer in the business of licensing his photographs to online and print media for a fee having a usual place of business at 52 Vereda Serena Road, Santa Fe, New Mexico 87508.

6. Upon information and belief, Defendant is a foreign business corporation duly organized and existing under the laws of the State of Delaware, with a place of business at 345 Park Avenue, New York, NY 10022.

7. At all times material, hereto, Defendant has owned and operated a website at the URL: <https://www.lofficielusa.com> (the “Website”).

8. Defendant is a for-profit entity.

STATEMENT OF FACTS

A. Background and Plaintiff’s Ownership of the Photograph

9. Wolman photographed Pamela des Barres, a well-known figure in the classic Rock music scene of the early 1970’s (the “Photographs”). A true and correct copy of the Photographs are attached hereto as Exhibit A.

10. Wolman is the author of the Photographs and has at all times been the sole owner of all right, title and interest in and to the Photographs, including the copyright thereto.

11. One of the Photographs (which depicts the subject’s back against the wall) was registered with the United States Copyright Office and was given registration number VA 2-114-914, with effective date of October 30, 2017 (the “914 Registration”). The content title of this Photograph, as it appears on the face of the 914 Registration, is “Pamela Des Barres 68450-5.jpg.” Attached as Exhibit B is a true and correct copy of the 914 Registration.

12. The second Photograph (which depicts the subject's legs crossed) was filed for registration with the Copyright Office on December 3, 2018 and assigned Serial #: 1-7191824271 (the "Application"). The Application currently remains pending and Plaintiff intends to amend his complaint once the registration number has been assigned.

B. Defendant's Infringing Activities

13. On or about July 16, 2018, Defendant ran an article on the Website entitled *Pamela des Barres: The Most Famous Groupie in the World*. See URL <https://www.lofficielusa.com/politics-culture/pamela-des-barres-the-most-famous-groupie-in-the-world> (the "Article").

14. The Article prominently featured the Photographs. A true and correct copy of the Article is attached hereto as Exhibit C.

15. Defendant did not license the Photographs from Plaintiff for its Article.

16. Defendant did not have Plaintiff's permission to publish the Photographs on its Website.

17. Prior to the filing of this lawsuit, there was no communication between Plaintiff and Defendant.

CLAIM FOR RELIEF
(COPYRIGHT INFRINGEMENT AGAINST DEFENDANT)
(17 U.S.C. §§ 106, 501)

18. Plaintiff incorporates by reference each and every allegation contained in Paragraphs 1-17 above.

19. Defendant infringed Plaintiff's copyright in the Photographs by reproducing and publicly displaying the Photographs on the Website.

20. Defendant is not, and has never been, licensed or otherwise authorized to reproduce, publicly display, distribute and/or use the Photographs.

21. The acts of Defendant complained of herein constitute infringement of Plaintiff's copyright and exclusive rights under copyright in violation of Sections 106 and 501 of the Copyright Act, 17 U.S.C. §§ 106 and 501.

22. Upon information and belief, the foregoing acts of infringement by Defendant have been willful or in reckless disregard of Plaintiff's rights.

23. As a direct and proximate cause of the infringement by the Defendant of Plaintiff's copyright and exclusive rights under copyright, Plaintiff is entitled to damages and Defendant's profits pursuant to 17 U.S.C. § 504(b) for the infringement.

24. Alternatively, Plaintiff is entitled to statutory damages up to \$150,000 per work infringed for Defendant's willful infringement of the Photograph included in the 914 Registration, pursuant to 17 U.S.C. § 504(c).

25. Plaintiff is further entitled to his attorney's fees and full costs pursuant to 17 U.S.C. § 505.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully requests judgment as follows:

1. That Defendant be adjudged to have infringed upon Plaintiff's copyrights in the Photographs in violation of 17 U.S.C §§ 106 and 501;
2. That Plaintiff be awarded either: a) Plaintiff's actual damages and Defendant's profits, gains or advantages of any kind attributable to Defendant's infringement of Plaintiff's Photographs; or b) alternatively, statutory damages of up to \$150,000 per copyrighted work infringed pursuant to 17 U.S.C. § 504;

3. That Defendant be required to account for all profits, income, receipts, or other benefits derived by Defendant as a result of its unlawful conduct;
4. That Plaintiff be awarded his attorney's fees and full costs pursuant to 17 U.S.C. § 505.
5. That Plaintiff be awarded pre-judgment interest; and
6. Such other and further relief as the Court may deem just and proper.

DEMAND FOR JURY TRIAL

Plaintiff hereby demands a trial by jury on all issues so triable in accordance with Federal Rule of Civil Procedure 38(b).

Dated: Valley Stream, New York
December 26, 2018

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